

**EXHIBIT 56**



65 Route 4 East  
River Edge, New Jersey 07661  
t: 201.441.9056  
f: 201.441.9435  
www.hartmannandoherty.com

New York Office  
110 Wall Street, 11th Floor  
New York, New York 10005  
t: 212.344.4619

Short Hills Office  
51 JFK Parkway, 1st Floor West  
Short Hills, New Jersey 07078  
t: 973.218.2599

October 13, 2009

Honorable Michael M. Mihm  
United States District Judge  
204 United States Courthouse  
100 N.E. Monroe Street  
Peoria, IL 61602

Re: **USA v. Ali Saleh Kahlah al-Marri**  
**Criminal No. 09-10030**

Dear Judge Mihm:

In anticipation of sentencing in the above-referenced matter, I would like to share with the Court my personal impressions of the defendant, Ali Saleh Kahlah al-Marri. Such impressions are based on my experience interacting with him from February 4, 2003, when I became his attorney and first met him in the Special Housing Unit ("SHU") at the Metropolitan Correctional Center ("MCC") in Manhattan, where he was being held in solitary confinement, until the present. I also would like to share with the Court my personal impression of the unusually severe conditions of Mr. al-Marri's pretrial confinement in New York and Peoria, while still a criminal defendant, that is, before he was designated an enemy combatant by President Bush on June 23, 2003.

My impressions of Mr. al-Marri are based on my observations of, and personal experience with, him over the past 6½ years. Indeed, I am one of the few people who have had direct contact with him for that extended period of time. Especially before he was designated an enemy combatant, I spent many hours meeting with him in the SHU and, in addition to discussions regarding the legal issues in his case, I also developed a sufficiently close personal relationship that he felt comfortable discussing with me intimate concerns relating to the welfare of his wife and children, and how he hoped they would conduct themselves during his prolonged absence. Because of this unique relationship, discussed at greater length below, when Mr. al-Marri was precipitously detained incommunicado by the government in June 2003, it was I who petitioned the Court as Mr. al-Marri's "Next Friend" under the habeas statute, a position which by law can only be filled by one with a particularly close connection to the person on whose behalf the petition is filed.

Honorable Michael M. Mihm  
October 13, 2009  
Page 2

I am hopeful that, by sharing my thoughts, the Court will be provided with a more complete picture of the defendant as a person, which can then be factored into the Court's sentencing determination. Also, by sharing my recollection of Mr. al-Marri's conditions of confinement in New York and Peoria, I am hopeful that the Court will be persuaded that those conditions, combined with his harsh treatment by the Defense Intelligence Agency ("DIA") while at the Naval Consolidated Brig in Charleston, and his continued isolation at the Brig even after his interrogations ended and the more enlightened views of the honorable members of the military and civilian Brig staff began to gain traction, were sufficiently atypical to warrant the Court's imposing a sentence less severe than the Court might otherwise impose.

#### DISCUSSION

In February 2003, I was a partner in the Criminal Group at Gibbons, P.C., in Newark, New Jersey. At that time, Larry Lustberg and I were asked to represent a Qatari national, Mr. al-Marri, who was charged in the Southern District of New York with various fraud and false statement counts, but who was suspected by the government of involvement with al-Qaeda. The proposed representation posed a personal dilemma.

Indeed, Mr. al-Marri would appear to be my polar opposite. I am Jewish and, around the time we were asked to represent Mr. al-Marri, I became president of my local Orthodox synagogue, a position in which I served for three years while representing him. I come from a fiercely patriotic family, whose roots in America go back over 120 years, and I am deeply appreciative of the great benefits that this country has bestowed on the world, in general, and on the Jewish people, in particular. Although my family -- safe in America -- was left untouched by Hitler's effort to exterminate Europe's Jews during World War II, my mother-in-law's parents and much of her extended family were annihilated in Auschwitz; she and her sister survived only because a righteous Polish Catholic family agreed to their father's final request to hide them. I am a Zionist with a deep love for the State of Israel and cognizant of its critical importance to the continued welfare of the Jewish people. Having studied at the Hebrew University in Jerusalem while a college student, and having lived in Israel with my wife and four children for two years (2006-2008) while this case was pending, I was and remain well aware of the existential threat posed by militant Islam to the United States, to the State of

Honorable Michael M. Mihm  
October 13, 2009  
Page 3

Israel, and to the Jewish people. I harbor no illusions regarding the nature of Islamic fundamentalism in its modern incarnation.

Yet, I also believe that -- on an individual level -- people can be influenced by their interactions with others; I believe that thoughtful people are capable of change. From the outset of my involvement in this case, I committed myself not only to advocating zealously that Mr. al-Marri was entitled to receive the full due process demanded by the Constitution, but to the following proposition, as well: if, in fact, Mr. al-Marri was the individual the government alleged him to be, then I had a rare opportunity to influence the worldview of someone who was perhaps opposed to every ideal that I value. That opportunity -- to affect the worldview of a committed Muslim -- was one I was not prepared to let pass.

Remarkably, despite holding very strong (but not necessarily atypical) views regarding the Arab/Israeli conflict, U.S. relations with Persian Gulf governments, purported Jewish/Israeli influence over U.S. foreign policy, and other issues of importance to Muslims worldwide, Mr. al-Marri knew essentially nothing about Judaism, and did not seem to have ever had a meaningful relationship with a Jew. He proved eager to learn, to hear opposing viewpoints, and to consider whether they could be reconciled with his religious view of the world. Indeed, perhaps because I had an academic background in Islamic affairs, or because we were both educated in orthodox religious schools, Mr. al-Marri and I quickly developed a close rapport. He was eager to teach me more about Islam; he was eager to learn about Judaism; we both were interested in the areas of religious overlap. For example, I was able to appreciate the importance to him of having access while imprisoned to Islamic texts interpreting the Koran, a desire that any Orthodox Jewish inmate would immediately understand because it is an obligation in both religions to engage in detailed study of religious texts. Similarly, while incarcerated at the SHU, Mr al-Marri was concerned that the kosher meals he was being served did not also satisfy the *halla*l rules for Islamic ritual slaughter. We discussed at some length the two religions' different-yet-similar approaches to ritual slaughter. Ultimately, he asked me to inquire of an Orthodox rabbi as to certain specific requirements of kosher slaughter, and he trusted that authority in coming to a decision regarding his own personal observance while incarcerated.

Mr. al-Marri and I also had many discussions about Middle East politics. Indeed, my family and I moved to Israel on August 15, 2006, a day after a U.N.-brokered cease fire went into effect ending the Second Lebanon War. During that conflict, Mr. al-Marri

Honorable Michael M. Mihm  
October 13, 2009  
Page 4

and I had intense discussions regarding Hezbollah's and Israel's respective justifications for their actions. At the end of those discussions Mr. al-Marri did not become a member of AIPAC; he did, however, demonstrate the ability to listen, to understand, and to consider new ideas and views contrary to his own. That is, he demonstrated the skills and self-awareness necessary to change.

I believe that Mr. al-Marri has changed from the day I first met him on February 4, 2003. That change has come about despite, and not because of, the harsh conditions of confinement that he has been subjected to over the past 8 years. Specifically, it appears to me that Mr. al-Marri has been moved by the relationships he has formed with his defense attorneys -- especially with Cheryl & Andy Savage -- as well as by his interactions with those soldiers and sailors, officers and enlisted men, who endeavored to treat him with honor, fairness, and integrity once the DIA ceased its interrogations of him at the Brig.<sup>1</sup> Moreover, that respect was reciprocated by Mr. al-Marri. When he felt he was being treated unfairly, he occasionally protested in a manner (e.g., throwing food) not unique among prisoners long confined in solitary confinement; but never in my entire career have I heard of an inmate, like Mr. al-Marri, who before engaging in such symbolic acts of protest warned the soldiers guarding him to move out of the way so their uniforms would not be sullied.

Make no mistake: Mr. al-Marri remains a committed Muslim; I presume that he still believes that America's involvement in the Middle East is misguided and his personal experience over the past 8 years may have reinforced his view that the United States fails to live up to the high standards of due process, fairness, transparency, and democratic ideals that it advocates throughout the world (while sometimes turning a blind eye to these principles in its dealings with the Middle East). He is now cognizant, however, of a facet of American character to which he had not previously been exposed, or which he did not previously appreciate. He has developed relationships that are meaningful to him; he has

---

<sup>1</sup> I note that, of the many mistakes in the government's handling of Mr. al-Marri's case, one of the most short-sighted errors was the government's failure over the past 8 years to make any concerted effort whatsoever (other than threats and other punitive measures) to influence Mr. al-Marri's worldview in a positive fashion. To the extent Mr. al-Marri's understanding of America is broader and more sympathetic than it once was, that change came about solely because of his personal interactions with defense counsel and the respect later shown to him by Brig personnel.

Honorable Michael M. Mihm  
October 13, 2009  
Page 5

shared experiences that have changed him; he senses deeply the loss occasioned by extended separation from his family, including the loss of his father while he was incarcerated. For those reasons, regardless of the acts (if any) he may have been prepared to engage in when he arrived in the United States over 8 years ago, it is my sense that he would not perform those acts today. This is not a man filled with rage, notwithstanding the manner in which he was treated over the past 8 years; he is man who -- having fulfilled his obligation to remain steadfast in the manner Islam commands -- would now like to return to his family and spend the rest of his days with them.

There are those who -- knowing nothing of me or Mr. al-Marri -- will say that I am naïve or otherwise suffer from Stockholm Syndrome (notwithstanding that I was not the one incarcerated). To the contrary, I believe that the United States must continue to take vigorous steps to root out militant Islam (albeit in a manner consistent with those values and constitutional principles that have made this country a light to other nations). A sentence imposed in a federal district court, however, is not an act of war; it must be a thoughtful and individualized determination that focuses on the accomplishments and failings of the individual appearing before the Court. Mr. al-Marri is a Muslim but -- to the extent his actions suggest that he once was -- he is no longer militant. Indeed, while reasonable minds can debate the gravity of his prior intentions, there is no evidence that al-Marri poses a continuing threat to the United States, there is no doubt that he has been punished over the past 8 years by conditions of confinement more severe than those imposed on perhaps any other pretrial detainee in this country (including the two other previously detained enemy combatants), and there is no question that he will one day be released and returned home. Given those circumstances, it makes sense for this Court to err on the side of grace by recognizing that Mr. al-Marri was treated in a manner that did not live up to American standards (whether one characterizes those standards as moral or constitutional), and to return Mr. al-Marri to Qatar bearing a message that, though our system may sometimes move slowly, ultimately even our foes are treated fairly and humanely.

Sadly, such treatment has been the exception and not the norm in this case. While Mr. al-Marri's treatment after he was designated an enemy combatant and transferred to the Navy Brig in Charleston is discussed elsewhere, the Court should be aware that Mr. al-Marri was held in solitary confinement, and treated unusually severely, from the date of his arrest on December 21,



Honorable Michael M. Mihm  
October 13, 2009  
Page 6

2001. At the MCC in Manhattan, the SHU is a prison-within-a-prison, fully segregated from other inmates and outside activities. Indeed, Mr. al-Marri was not afforded any outside recreation the entire time he was incarcerated at the MCC; he did not ever see the sun. He also was denied any telephone contact with his family. As described in a January 6, 2003 letter Mr. al-Marri wrote to Southern District Judge Marrero (attached as Exhibit A), his treatment in the SHU was brutal: he was repeatedly strip searched, the guards woke him 3-4 times every night, they mocked his religion, he was denied telephone calls with his lawyer, and otherwise treated like the most violent of convicted felons even though he had not been convicted of any offense and posed no physical danger to anyone. The treatment described in Mr. al-Marri's letter and, in particular, his isolation from others, continued throughout the period of his incarceration in Manhattan.

Before the district court in New York granted a defense motion to dismiss the indictments then pending on the basis that the Constitution prohibited his having been transferred from Peoria and prosecuted in the Southern District of New York, Mr. al-Marri, Mr. Lustberg, and I met with Deputy U.S. Attorney (later Acting U.S. Attorney) David N. Kelley in the Offices of the United States Attorney for the Southern District of New York. At that meeting, Mr. Kelley informed Mr. al-Marri that, if he refused to cooperate with the government and insisted on venue in the Central District of Illinois, a right afforded him by the Constitution, the conditions of his confinement would be exacerbated. In fact, they were. When transferred from Manhattan to the Peoria County Jail, Mr. al-Marri was held in solitary confinement on 24-hour lockdown, he was denied any personal possessions, he was taken to shower in handcuffs and shackles, when he complained of numbness and other physical ailments associated with prolonged isolation and confinement the nurse suggested "he could do push-ups, sit-ups or run in place" in his cell, and he was denied access to counsel, Qatari consular officers, family, reading materials, recreation, appropriate medical treatment, and religious items, including even a Koran. These facts are corroborated by Jail Incident Reports attached as Exhibit B, and consistent with findings made by the Office of Inspector General in its June 2003 report: "The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks."

In short, the conditions of confinement imposed upon Mr. al-Marri while he was still a pretrial detainee, and presumed to be innocent, were unlike any I have ever personally encountered (or

Honorable Michael M. Mihm  
October 13, 2009  
Page 7

heard about) with respect to any other defendant. Not only was Mr. al-Marri denied his liberty which, perhaps, is not so unusual for a pretrial detainee, but the severe restrictions imposed upon him were intended to be punitive and, in any event, had that effect. Because the 19 months Mr. al-Marri spent as a pretrial detainee, prior to his being designated an enemy combatant, were atypically harsh -- and certainly significantly more severe than the conditions experienced by the typical pretrial defendant who receives credit for time spent incarcerated while awaiting trial -- Mr. al-Marri's sentence should be mitigated to reflect the fact that he has, in that respect, already been punished more severely than the typical defendant.

#### CONCLUSION

Over the years, Mr. al-Marri has been very appreciative of his attorneys' efforts on his behalf but, as a man of deep religious faith, he has always made clear his belief that ultimately only God will decide when he will be released. I understand that religious worldview. As an officer of the Court, however, I have always maintained a separate faith that the federal judiciary would eventually fully re-assert itself, as it recently has, as a co-equal branch of government, and vindicate against assertions of unlimited executive authority those individual constitutional rights conceived by men wiser than we for the very purpose of ensuring that we do not descend to the level of our enemies, who do not fully value all human life as a moral imperative.

It is axiomatic that the Judeo-Christian tradition commands "Justice, justice you shall pursue." Deut. 16:20. Less familiar is the reason offered for that duty: "Justice, justice you shall pursue -- so you may live, and be worthy of inheriting the land which the Lord has given you." The word "justice" is repeated twice not simply to emphasize its importance, but also as an acknowledgment that reasonable people can differ on what justice demands. As the text suggests, however, when deciding between different conceptions of justice, the Court should select one which affirms the value of life and the principles we have inherited from our forefathers, so that we remain worthy of inheriting this country's great blessings.

As Mr. al-Marri's 8-year saga nears its dénouement, this Court is asked by the government to choose a conception of justice that would deny that a day in the Brig is a day in prison, that abuse of one held as an enemy combatant is prisoner abuse, that prolonged isolation is psychologically damaging, and that harassment of a



Honorable Michael M. Mihm  
October 13, 2009  
Page 8

Muslim is religious harassment. What cannot be denied, however, is that these events took place, and that they are fundamentally un-American. This truth should be acknowledged, and reflected in Mr. al-Marri's sentence.

I thank the Court for its consideration of this letter.

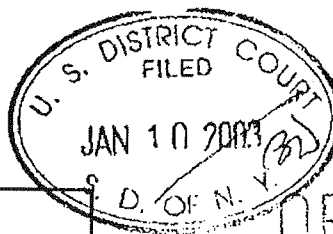
Respectfully yours,

**REDACTED REDACTED**

Mark A. Herman



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



ORIGINAL

UNITED STATES OF AMERICA,

-against-

02 Cr. 147 (VM)

ORDER

ALI SALEH KAHLAH AL-MARRI,

Defendant.

DOC # 43

VICTOR MARRERO, United States District Judge.

On January 6, 2003, defendant Ali Al-Marri ("Al-Marri") sent the attached letter directly to the Court, rather than through his lawyer, objecting to the conditions of his confinement in the Special Housing Unit ("SHU") of the Metropolitan Correction Center. The Court recently issued a ruling, by Order dated December 30, 2002, denying his motion for immediate transfer out of the SHU. Accordingly, it is hereby

ORDERED that the Clerk of the Court transmit a copy of Al-Marri's letter to his attorney in this action and to the Government; and it is finally

ORDERED that Al-Marri no longer send ex parte communications to the Court, and instead shall communicate with the Court only through his attorney.

ACQUITTED COPY  
J. MICHAEL McMAHON, ACTING CLERK

BY **REDACTED**  
DEPUTY CLERK

MICROFILM  
JAN 10 2003  
3 00 PM

SO ORDERED:

Dated: New York, New York  
9 January, 2002

 **REDACTED**

Victor Marrero  
U.S.D.J.

Honorable Judge Marrero

Jan-6-03

Your Honor, enough is ~~eng~~ enough. I have to get out of here - Administration Dedention - Aman Can take only - So mash, you honor.

Your honor I am in a deep emotional depression and distress. I am too occupied dealing & solving my daily problem in the 9-South, to think or help my Lawyer to defend my self.

Your Honor, Do you know that they - the Guards - wake me up during sleeping at night 3 or 4 times saying "Almarri are you dead" and knocking on my cell door, then leave. Do you know, that they strip-search me every time I go to medical or even to the Law Library which is in my unit, or worse, they will search my cell, then strip search me. It is against my religion and custom to be seen naked, it is very ~~hon~~ insulting & disgrace especially, when they say after taking all of your clothes off, turn around & bend over & spread them with your hand. Do you know, I have not talked to my wife, kids or other family member for the last six months, because one guard lied about me & they gave me a ticket of not calling my family. Do you know sometimes they will do my laundry and return everybody else's laundry within hours, and mine after 3 days. Do you know some guard would said to me "it is a rap, we have captured him, he is dead, no more praying, I said what are you talking about, he said we have captured Allah, no more prayer, he is dead. Do you know I have been in the hole (2x3 1/2 meter) and having a camera in my cell, they watch me even when I used the toilet. And I spent 24 hours daily inside so to avoid the harassment & insult from Guards when I go to recreation which is another big cage.



(2)

Do you know that I have not had a phone call to my lawyer for almost 2 months.

Your Honor, with all of these problem which are almost daily, I can't think clear to help my lawyer to defend my self, everytime he comes to visit I would be complaining about ~~them~~ them, and I am in upset & distress to talk to to think clear about my case.

Your Honor, all of the above problem is because I am in the 9<sup>th</sup> South. I am assumed guilty until proven otherwise. Everybody think I am connected to the 9/11 event even when I showed them my court paper and it is only credit card, they say why then you are not in population like other arabic or muslims.

Your Honor, I have been found guilty before the Court decided.

Your Honor, I seek Justice from Allah first, then from you. my charges does not merit staying in the

administrative detention. I am being punished before conviction.

Your Honor, please get me out of here, please.

Almarri, ALi

Almarri, ALi  
Reg# 12194-026

MCC-NY

150 park Row

New York, NY 10007



FILE No. 472 06/26 '03 15:13 ID: HINSHAW &amp; CULBERTSON

FAX: 3096749328

PAGE 2

Page one (1) of 2

Pages

## JAIL INCIDENT REPORT

PEORIA COUNTY  
SHERIFF'S DEPT
☒ 8  
☐ 9  
☐ 10  
☐ 11  
☐ 12

 Affair No. 03-5828  
 Date 06/25/03

NO.	NAME	SEC.	AGE	DOB	MO	DAY	YEAR	REPORT NO.	DATE	TIME	REPORTED BY	REPORTED DATE	REPORTED TIME	REPORTED PLACE	REPORTED NO.
1	W 05 M B	SEC 1	301 N. Maxwell	1744	06	25	03	1744	06	25	03	1744	06	25	03
2	O 05 M B	SEC 1	301 N. Maxwell	1744	06	25	03	1744	06	25	03	1744	06	25	03
3	O 05 M B	SEC 1	301 N. Maxwell	1744	06	25	03	1744	06	25	03	1744	06	25	03
4	S 05 M B	SEC 1	301 N. Maxwell	1744	06	25	03	1744	06	25	03	1744	06	25	03
5	S 05 M B	SEC 1	301 N. Maxwell	1744	06	25	03	1744	06	25	03	1744	06	25	03

I-Informational  
 F-Spec 1 and 2nd Daniel L. Basfield  
 A-At-Mari was standing by the window of his cell that faces the yard writing in a piece of white paper that look to have 3 lines of writing on it. The paper was about 4-5" long and 2-3" wide. I asked permission to search his cell and was told to do so if I had another officer.  
 I then contacted Des Kester and informed him of what I suspect.  
 That Al-Mari was attempting to give one of the inmates a phone number.  
 Al-Mari was standing by the window of his cell that faces the yard writing in a piece of white paper that look to have 3 lines of writing on it. The paper was about 4-5" long and 2-3" wide. I asked permission to search his cell and was told to do so if I had another officer.  
 I called G-H Guard Station Daniel L. Basfield 336  
 1822 06 05 03  
 336  
 374

FILE No.472 06/26 '03 15:14

ID:HINSHAW & CULBERTSON

FAX: 3096749328

PAGE 3

Page 01 of 1	
NARRATIVE CONT.	
	and officer Briggs came to assist.
	We cuffed Al-Mari behind his back and cuffed him to the handle of ES-3 outer door. Central Control stopped all movement in the East West corridor while we searched his cell. No paper resembling the one he was writing on was found.
	After completing the search I went to question E4-7 Deaguera who was the inmate Al-Mari was talking to. Deaguera said that Al-Mari had given him a phone number yesterday to call for a Muslim Bible. But the number would be except a collect call. I asked Deaguera what the number was and he said 688-4650 or something like that. I called the # and it was to Arg's Appliance. When I looked for Religious Organizations in the yellow pages Islamic Center of Peoria # is 688-4605.
Supervisors Comments:	

Page one (1) of 1		Pages		JAIL INCIDENT REPORT		Date of Report		Time of Day			
Officer's Name		Officer's ID		Inmate's Name		Inmate's ID		Inmate's Cell			
[Blank]		[Blank]		Light Tom		1215		6/1/03 Sat			
SEC. A:		K-Dead Before Report		O-No Indication of Injury		A-Bleeding		Carried from Scene			
SEC. B:		S-Sober		D-Drunken		I-Intoxicated/Under Influence		O-Other (Describe in Narrative)			
SEC. C:		M-Male		F-Female		X-Unknown		W-White N-Negro M-Mexican J-Japanese I-Incan P-Puerto Rican C-Caucase O-Other			
SEC. D:		NARRATIVE:									
		On the above date and time while picking up Al-Menni lunch they he told me that he needed to see the doctor because <del>that</del> <sup>his</sup> left arm and leg were numb. I called Sgt. Ludolph and the nurse and about officers came down to F-spec. The nurse told Al-Menni that he needed to drink more water and exercise. Al-Menni said that there was not enough room in his cell to exercise.									
		The nurse told him that he could do push-ups, sit-ups or run in place and this would help. The nurse also told Al-Menni that she would tell the doctor about his problem and see if there was anymore they could do. Des. Wilson was notified about the situation.									
		REPORTING OFFICER'S NAME OR NUMBER		Tom L. Wright		ID#		383		SIGNATURE OF OFFICER	
		REPORTING OFFICER'S PHONE NUMBER		1255 40 6		DATE		03		SIGNATURE OF INMATE	
		INMATE'S SIGNATURE		[Signature]		ID#		311		INMATE'S CELL	



[illegible]